

Agenda
City of Fayetteville Arkansas
Telecommunication Board
December 15, 2011

A meeting of the Telecommunication Board will be held at **5:30 P.M. December 15, 2011 in Room 326** of the City Administration Building at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Approval of November meeting minutes

Approval of December 15, 2011 meeting agenda

Old Business

1. Discussion of Amendments to Article IX Telecommunications Board of the Fayetteville City Code
2. Discussion of Amendments to Article VI and Article VII of the Administrative Rules of the Fayetteville Telecommunications Board

New Business

1. Review of amended minutes of October meeting
2. Review of request for City Attorney to request Attorney General Opinion regarding the clause in the Public Access operator contract dealing with utilizing the Public Access Channel for activity, the purpose of which is to generate revenue (fundraising activity).
3. Report from the City Cable Franchisee
4. Report from Television Center Manager
5. Report from Public Access operator

Other committee reports

Citizen communications by persons wishing to address matters not on the agenda, subject to such time limitations as the Board may establish.

Announcements from Board Members and Staff

Adjourn

Members of the public may approach Board members prior to the meeting and request items to be added to the agenda.

[illegible]

Telecommunications Board Meeting Minutes

November 17 2011, 5:30pm Room 219, City Administration

Present were Michael Ehrig, Blake Pennington, Aubrey Shepherd, Mitchell Spearman and Michael Spencer. **Not present** was Stephen Smith. **Also present** were Fritz Gisler, Fayetteville Television Center Manager; and Anne Shelley, Executive Director of the Fayetteville Public Access Provider Your Media.

Pennington called the meeting to order and called roll.

Approval of October meeting minutes: **Pennington** moved to amend the minutes on page seven, Item seven. He asked to change where he had said how many work days were spent on complaints. He said he believed he said about 8 and one half because he divided 67 by 8. **Shepherd** moved to adopt the agenda as amended and **Ehrig** seconded. All approved.

Approval of Agenda: **Gisler** explained the new format of the agenda which was based on the Administrative Rules of the Telecommunications Board. The rules do not specify to include reports by the Public Access Provider or the Education Channel and they do have a place for the Channel Franchisee report. **Gisler** said that S. Smith requested that the Board review Article VI for discussion of Agenda changes. **Gisler** said that the Cable Franchisee was not present for a report and that the Public Access Provider was.

Pennington moved to delete point one under New Business and to add a report from the Public Access Provider. **Gisler** asked about the discussion of the Administrative Rules. **Pennington** said that was under Old Business. **Ehrig** seconded the motion to accept the agenda as amended. All approved.

OLD BUSINESS

1. Discussion of Amendments to Article VI and Article VII of the Administrative Rules of the Fayetteville Telecommunications Board: **Pennington** asked that the discussion of Article 6 and 7 be passed on to the December meeting. All agreed.

NEW BUSINESS

1. Television Center/ Government Channel Report: **Gisler** talked about the following points: Holiday schedule accommodations; a successful Mayor's Town Hall Meeting; new digital signage in the City Administration building which gives meeting information and information about City Council members; new signage on the Television Center building hopefully to be installed by the first of the year.

2. Fayetteville Public Access Report: **Shelley** referenced the report included in the packet emphasizing that it has been a very good year. The contractual obligation number for new Candidate Producers in a year had already been exceeded and the Contract for next year had been unanimously approved by the City Council.

Spearman asked about the age of producers and about the length of time they have been residents of the city. **Shelley** said she would include average age in her end of the year report.

Pennington brought up that **L. Smith** had notified him that Fayetteville had won an award as being number 7 in the nation as a Digital City. **Gisler** expressed that this was an overall City award and made specific mention of Community Link and of the Government Channel's providing video on demand and web streaming.

Shepherd reminded the viewers that Fayetteville Public Access records Short Takes twice a week. **Gisler** spoke about the services of Fayetteville Public Access being free for residents of Fayetteville.

Other Committee Reports: Pennington said there were none.

Citizen communications by persons wishing to address matters not on the agenda, subject to such time limitations as the Board may establish: None

Announcements from Board Members and Staff: **Gisler** said that next month the meeting would be back in room 326 and all of next year the meetings would be in room 326.

Pennington mentioned that **S. Smith** had requested that two items be on the agenda for next month. **S. Smith** had asked to rescind the motion to request the Attorney General's opinion on changes in the Telecommunications Ordinance which was passed at the October meeting, and that, as a part of Old Business, to include Discussion of Amendments to Article VI and Article VII of the Administrative Rules of the Fayetteville Telecommunications Board.

Adjourn: **Spearman** moved to adjourn. **Ehrig** seconded. **Adjourned**



Departmental Correspondence



LEGAL
DEPARTMENT

www.accessfayetteville.org

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: **Telecommunications Board**

CC: **Lindsley Smith**, Communications & Marketing Director
Fritz Gisler, Government Channel Manager

FROM: **Kit Williams**, City Attorney

DATE: **December 1, 2011**

RE: **Revision of Article IX Telecommunications Board of Fayetteville Code**

I have reviewed the proposed revision of Article IX **Telecommunications Board** of the Fayetteville Code which was submitted to me by the Telecommunications Board. I believe that you have made several well-reasoned and appropriate changes to the current ordinance.

I have made a few suggested changes myself for your consideration. Please see the attached proposed amended copy. Some changes, like the title of the ordinance are merely stylistic rather than substantive. Recently, the City Council enacted uniform rules and procedures, eligibility and attendance requirements for all citizen volunteers serving on City boards, committees and commissions. Therefore, I have drastically shortened §33.206 which is now controlled by §33.330-§33.332.

Under §33.210 **Duties**, I have suggested changes in (6) and (7) to **add** Internet Protocol (IP) television provider (such as AT&T Arkansas) to the existing cable operator and telecommunications franchisee to try to cover all current providers. With further advances and changes in this exploding technological area, we will probably learn of new forms of service and new names for future providers. The City Council will appreciate your advice on the performance and renewal of all such providers.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE IX TELECOMMUNICATIONS BOARD OF THE CODE OF FAYETTEVILLE, BY REDEFINING THE PROCEDURES AND DUTIES OF THE TELECOMMUNICATIONS BOARD

WHEREAS, under the terms and conditions of the cable television franchise agreement the city is given, among other responsibilities, the duty to regulate cable television channels for public access, educational and governmental (PEG) programming; and

WHEREAS, the use of the public rights of way in the City of Fayetteville, Arkansas, includes other telecommunications services as well as cable television services; and

WHEREAS, the City Council of the City of Fayetteville, Arkansas, desires to redefine the scope of the current Telecommunications Board to serve in an advisory capacity regarding telecommunications issues, to promote the use of public information media, and to serve as a coordinating body for issues relating to the provision of different telecommunications services.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That §33.205 through §33.211, "Telecommunications Board" is hereby repealed and Exhibit "A" attached hereto and made a part hereof, is enacted in its stead.

PASSED and APPROVED this 3rd day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Exhibit "A"

§33.205. Purpose and Intent. It is the purpose and intent of the City Council of the City of Fayetteville to redefine the scope of the Telecommunications Board to advise the City Council on telecommunications issues, telecommunications franchise systems and use of the public rights of way designated for public access, educational, and governmental (PEG) use in the City of Fayetteville as part of the city's telecommunications infrastructure.

(a) **Definitions.** For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) *Education Channels.* Education channels shall provide programming that is educational and informational, with an emphasis on locally-produced programming. Programs may also be instructional, with learning potential for all audiences.

(2) *Government Channels.* Government channels provide citizens with convenient access to the city government. The station shall be operated in an unbiased manner. The goal is to create an informed and involved citizenry. Content will generally be created or acquired by local government employees, elected officials, and volunteers, and will typically provide information about services provided by local, State, and regional governments, issues faced by local governments, and public meeting coverage.

(3) *Public Access Channels.* Public access channels provide a forum for Fayetteville residents to express themselves. Content may include video and other electronic information produced, directed and engineered by community members. These productions focus on many aspects of community life, ranging from the services and activities of community organizations to the opinions, beliefs and artistic expressions of individuals in the community, or outside productions requested and introduced by community members.

§33.206. Composition. The Fayetteville Telecommunications Board shall consist of seven members appointed by the City Council. Members should have experience in one or more of the following areas: telecommunications infrastructure management, public policy development regarding communication and telecommunications issues, television, or other appropriate expertise. All members shall serve staggered four-year terms.

§33.207. Officers. The Telecommunications Board shall elect from its members a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. Further, the Telecommunications Board may elect such additional officers and establish any committees as it deems necessary for the proper performance of its duties.

§33.208. Staff Support. The Mayor should designate city employees to assist the Telecommunications Board in performing its duties and carrying out its responsibilities under this ordinance.

§33.209. Procedures.

(a) The Telecommunications Board shall meet at least once each month and may meet more frequently if necessary to carry out its duties. Four members shall constitute a quorum.

(b) The Telecommunications Board may establish rules and regulations governing its procedures.

(c) The Telecommunications Board's meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, A. C.A. §§25-19-101 *et seq.*

(d) The Telecommunications Board shall provide the City Council an annual report briefly summarizing its previous year's activities and outlining its goals for the next year.

§33.210. Duties.

(a) The Telecommunications Board shall advise the City Council and make recommendations on telecommunications infrastructure issues, including but not limited to the following:

(1) Use and administration of cable TV channels designated for public access, educational, and governmental (PEG) use;

(2) Use and administration of telecommunications facilities and use of public rights of way for telecommunications infrastructure;

(3) Establishment and use of the City's PEG facility;

(4) Any reports submitted to the City by a cable TV operator, PEG channel user, telecommunications agency, or other entities regarding telecommunications matters;

(5) Funding for public access, educational, and governmental (PEG) operations;

(6) Performance of any cable operator, IP television provider or telecommunications franchisee serving the City, with regard to customer service, technical standards, programming, and requirements of the applicable franchise agreement; and

(7) Renewal of any franchise agreement by any such provider.

(b) The Telecommunications Board shall have the following duties and responsibilities:

(1) Regularly review the administration of the City's PEG facility;

(2) Regularly review the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG

channel, the Telecommunications Board shall ensure contract compliance. Whether administered by the city or contracted, the Telecommunications Board shall work with City staff to facilitate the creation of policies regarding cablecast material selection, time guidelines for cablecast material, viewer and facility user complaint/feedback practices, and other such policies regarding the use and administration of the channels. A summary of all evaluations shall be forwarded to the City Council quarterly for their review.

(3) Facilitate dispute resolution concerning PEG channels, including but not limited to operations, program content, etc.; track the complaints filed by Fayetteville residents to assure that telecommunications franchisees and access providers are responding to complaints in an effective and timely manner.

(4) Promote public awareness, use and viewership of PEG channels;

(5) Promote public awareness of telecommunications policy issues; and,

(6) Forward a report to the City Council recommending either renewal or replacement of any cable or telecommunications franchisee no less than 45 days before the contract's expiration.

(c) The Telecommunications Board shall have authority to establish and disseminate such guidelines and regulations as are necessary to carry out the duties and responsibilities set forth in this section.

ADMINISTRATIVE RULES OF
THE FAYETTEVILLE TELECOMMUNICATIONS BOARD
August 18, 2011

INTRODUCTION

DEFINITIONS

For the purposes of these Administrative Rules, the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the use of any gender shall be applicable to all genders whenever the sense requires. "Chairperson" may also be referred to as Chairman, Chairwoman, or Chair, and prefixed by the word "Vice," if appropriate. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning unless the same are cable television technical words or phrases.

- a. "Television Center Manager" is the person appointed by the Mayor of Fayetteville, pursuant to Ordinance 4504, Section 1, §33, 208, whose duties include consultation, conferring, and cooperating with the Telecommunications Board, among others, in the enforcement and administration of the cable franchise and related telecommunications contracts.
- b. "City" is the City of Fayetteville. "City employee" refers to the "Television Center Manager" and such other employees of the City of Fayetteville as are designated to assist the Telecommunications Board.
- c. "Board" is the Fayetteville Telecommunications Board and, if the context so indicates, may include one or all of its committees.
- d. "Company" is Cox Communications, a company authorized to do business in Arkansas, or its successor, transferee or assignee, and the principal cable television franchisee of the City.
- e. "City Council" means the governing body of the City of Fayetteville.
- f. "Voting member" means one of the seven citizen members appointed as such by the City Council.
- g. Whenever "act of the Board," "action of the Board," "approval of the Board" or "vote of the Board" appear herein, such phrase shall mean the competent vote required by law or rule sufficient for such act, action, approval, or vote to be effected. When the word "committee" is substituted, the same meaning shall apply.
- h. Whenever reference is made in these Rules to a designated officer-title or a designated entity or group, such reference includes, unless otherwise stated, or the context indicates

the contrary, the successor of such officer's or entity's, or group's relevant function or relationship, as the case may be. Such references also embrace persons duly acting as such officer, whether temporarily appointed or such officer's proper designate, whether by rules or otherwise, unless otherwise stated or plainly indicated.

ARTICLE I. Name, Purpose and Intent

- a. All items stated in the caption of Article I are set forth in City of Fayetteville Ordinance No. 4504, here referred to by the short title, "Telecommunications Board Ordinance." The cited ordinance is incorporated herein by this reference.
- b. (1) Any member desiring to resign from the Board shall submit his resignation in writing to the Chair of the Board. Resigning members shall continue to serve until they are replaced.

(2) All members shall be deemed active and in good standing unless the Board certifies otherwise. If a member of the Board misses three consecutive meetings without prior notification about the absences, the Chair will send a letter asking if the member would like to become active and remain on the Board, resign, or be removed. If necessary, removal action will be taken at the next regular meeting of the Board, with notification sent to the City Clerk. The Board, in the event of a dispute and upon written petition, may resolve all questions finally as to activity, standing, and tenure, subject only to appeal to the City Council.

ARTICLE II. Meetings

- a. The regular meeting of the Board shall be held at 5:30 p.m., the third Thursday of each month. The Board, for good cause, and with prior notice, may designate an alternate time for a regular meeting from time to time.
- b. The Board's meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, Ark. Code Ann. Par. 25-19-101 et seq.
- c. Special meetings or study sessions may be called for any time and place on any subject germane to Board duties and responsibilities on the request of any Board member. Such meetings shall be announced to all board members and be held according to FOIA laws. Dates, times and venues shall reasonably accommodate all Board Members.
- d. Special call or emergency meetings may also be set upon the written petition of three (3) members of the Board coordinated through the Chair.

ARTICLE III. Quorum and Voting.

Four active voting members of the Board in good standing shall constitute a quorum for the purpose of voting and no votes shall take place without a quorum. Unless otherwise indicated, the Board shall act by a majority vote of the members at a properly constituted meeting.

ARTICLE IV. Officers and Duties

- a. (1) The officer of the Board shall be the Chair. The Chair shall be elected by majority vote of the committee.

(2) By a majority vote of the Board, committees may be established as necessary to carry on the work of the Board. Committee members shall be appointed by the Chairperson with consent of a majority of the Board from among volunteering Board members when possible. Committees will choose their chairpersons. Committees will report and make recommendations to the Board on matters within their respective assignments. No committee shall constitute a quorum of the voting members of the Board. Committees may not conduct business, make policy decisions, or render press releases on behalf of the Board, the City of Fayetteville, City Council, or the City staff, unless properly and expressly authorized to do so.
- b. The officer shall be elected annually at the August regular meeting
- c. Duties of the Chair shall include.
 - (1) Presiding at all meetings of the Board.
 - (2) In collaboration with the Board and Television Center Manager, formulating all regular and special Board agendas.
 - (3) Taking attendance at all Board meetings.
 - (4) Signing all official documents and correspondence on behalf of the Board.
 - (5) Acting as the official spokesperson of the Board, the principal liaison of the Board with the City Council, and with others as the Board directs.
 - (6) Receiving, transmitting, and monitoring responses on Board requests for legal opinions, reports, or other information from City staff, the Company, or others.
 - (7) Performing any lawful duty assigned either by vote of the Board or by these Rules.

ARTICLE V. Duties of the Telecommunications Board

- a. The duties and responsibilities of members shall include:
 - (1) Initiating all official action by a motion or a second.
 - (2) Voting, when present, on any question put to a vote unless excused from voting by the Board.
 - (3) Attending all regular meetings, unless otherwise excused, and special called meetings of the Board.
 - (4) Notifying the Chair in advance of any necessary absences from Board meetings.
 - (5) Serving on all committees to which appointment has been made by the Board.
 - (6) Performing any lawful duty assigned by majority vote of the Board.
- b. If any Board member has a personal pecuniary interest, direct or indirect, in any decision pending before such Board member, he/she shall not vote, discuss or otherwise participate in the consideration of the matter, but shall publicly disclose the nature and

extent of such interest in the official records of the Telecommunications Board prior to any determination of the matter.

ARTICLE VI. Order of Business

- a. For all meetings, an agenda, with appropriate supporting documents, shall be mailed to all Board members at least six (6) days in advance of the meeting day.
- b. The agenda order for regular Board meetings shall be as follows:
 - (1) Call to order.
 - (2) Call of the Roll.
 - (3) Approval of minutes of prior meeting(s).
 - (4) Adoption of agenda.
 - (5) Sequential consideration of other items duly noticed for the meeting.
 - (6) Report from the City Cable Franchisee.
 - (7) Report from Television Center Manager.
 - (8) Report from Board committees.
 - (9) Citizen communications by persons wishing to address matters not on the agenda, subject to such time limitations as the Board may establish. The Board, however, shall not act on such matters. Citizens wishing to address matters on the agenda may be heard when the Board takes up such agenda items, subject to time limitations as the Board may establish.

ARTICLE VII. Citizen Complaint and Feedback

The Telecommunications Board, through assistance of City Staff, will manage a process whereby residents can communicate their comments, complaints or feedback regarding:

- a. The activity of the Telecommunications Board
- b. The programming or operations of The Fayetteville Government Channel
- c. The programming or operations of Fayetteville Public Access Television
- d. The programming or operations of the Education Channel
- e. The operations of the City of Fayetteville Television Center
- f. Any other issue involving telecommunications or telecommunications services providers that have an impact on the residents of Fayetteville

Individuals may communicate comments, complaints or feedback by:

1. Contacting the Mayor's designated City Staff liaison to the Telecommunications Board
2. Contacting a member of the Telecommunications Board
3. Communicating directly with the Board in a Board meeting

Complaints

Complaints regarding the operations or programming of The Government Channel or Fayetteville Public Access Television will be initially investigated and responded to by the respective management of each channel following currently established procedure. Each procedure provides for an appeal process.

It is the responsibility of the City Staff liaison to initially document, investigate and respond to any complaints communicated to the Telecommunications Board. A complaint will only be investigated and responded to if it is the desire of the complainant to file a formal complaint. To qualify as a formal complaint, the complaint must be submitted in writing with the complainant providing their name and contact information. The Staff liaison will make available a form that can be used to submit a formal complaint to the Telecommunications Board, and provide assistance to those requiring help in completing the form.

1. Complaints communicated to the City Staff liaison will be immediately investigated by the City Staff liaison in accordance with the procedure described herein.
2. For complaints communicated to a member of the Telecommunications Board, the complainant will be referred to the City Staff liaison for follow up.
3. Complaints that are presented directly to the Telecommunications Board at a Board meeting will be documented by the City Staff liaison for follow up. The complainant will be advised that the City Staff liaison will investigate the complaint and present findings to the complainant and the Telecommunications Board at its next regular meeting.

After a formal complaint is submitted, the Staff liaison will follow this procedure:

1. Document the complaint, recording:
 - a. Date
 - b. Time
 - c. Nature of the complaint
 - d. Contact information of the complainant
 - e. As many details as possible to facilitate the investigation of the complaint
2. Immediately communicate to the complainant their complaint is being investigated, and they will receive a preliminary response, in writing, regarding their complaint within 3 business days.
3. Advise the City's Director of Communication of the complaint.
4. Investigate the complaint to determine all pertinent information, documenting the process, the findings and the recommendations of City Staff to the Telecommunications Board.
5. Provide a written response to the complainant detailing the investigation of their complaint, any findings thereof, and any initial action taken in response to the complaint. The complainant will be advised their complaint will be included on the agenda to be considered by the full Telecommunications Board at their next regular meeting. If the complaint is received within 15 days of a regular meeting of the Board, it will be scheduled to be heard at the subsequent regular meeting.

6. Provide all information regarding the complaint to members of the Telecommunications Board via the meeting information packet.
7. Document all action taken and information regarding the complaint, including any pertinent meeting minutes, and keep such documentation in a file in the archives of the Telecommunications Board.

When considering a complaint at a full meeting of the Telecommunications Board, the following procedure will be followed:

1. A new complaint will be an individual item of new business on the meeting agenda.
2. The City Staff liaison will present the results of their investigation of the complaint, along with any information regarding applicable laws, regulations or ordinances, and any other information that may be pertinent or useful to the Telecommunications Board in making any determinations.
3. The complainant will be provided an opportunity to present any information and their position regarding the complaint.
4. The Telecommunications Board will discuss the complaint and ask any questions that may be necessary of either the City Staff liaison or the complainant.
5. The Board will present its determination and vote on the subsequent action.

In response to the complaint The Telecommunications Board may take one of the following actions:

1. The Board requires further information, or investigation of the complaint.
2. Determine the complaint is unfounded; no further action to be taken by the Telecommunications Board.
3. Determine the complaint is valid; no further action to be taken by the Telecommunications Board.
4. Determine the complaint is valid; The Telecommunications Board directs City Staff to present the complaint to the City Council. If this action is selected, the Telecommunications Board must state the action they are advising the City Council to take.

Consideration and response to complaints will follow all administrative and meeting conduct rules and procedures, including a formal motion and vote on the action to be taken. In all cases, the Board must provide supporting reasons and justifications for the determination and action taken.

After the Board has determined action, the City Staff liaison will provide a written response to the complainant within three (3) business days, detailing the complaint, the action taken by the

Telecommunications Board, the justification and reasons for the action taken, and the process for appealing the action of the Telecommunications Board, should the complainant so desire.

Telecommunications Board Meeting Minutes

October 20, 2011, 5:30pm Room 326, City Administration

Present were **Aubrey Shepherd**, **Blake Pennington**, **Michael Ehrig**, **Stephen Smith**, **Mitchell Spearman** and **Michael Spencer**. **Also present** were **Fritz Gisler**, the Government Channel Manager; **Anne Shelley**, Fayetteville Public Access Television Executive Director; **Kit Williams**, City Attorney; **Cathy Foraker**, AT&T representative; **Lindsley Smith**, City Communications Director; **Jim Bemis**, **Marvin Hilton**; **Rick McKinney**, Lions Club; **Don Marr**, City of Fayetteville Chief of Staff.

Pennington called the meeting to order and called on **Gisler** for a packet insertion. **Gisler** handed out an insert submitted by **S. Smith** for Item 8 and a revised front page of the AT&T Uverse Agreement. **Gisler** also gave the new member, **Mitchell Spearman**, a certificate of appreciation.

Pennington called roll.

APPROVAL OF MINUTES of September meeting. **Shepherd** moved for acceptance. **Ehrig** seconded. All approved.

APPROVAL OF AGENDA: **Pennington** told that **Marvin Hilton** requested the addition of two items. Number one was to discuss the potential impact on transparency and citizen involvement in government due to the following: 1. recent changes in the Government Channel policy and 2. proposed changes to the Telecommunications Board Ordinance.

Pennington said that the Government Channel policy had been adopted a year ago and that the Telecommunications Board ordinance was already on the agenda for discussion

Shepherd moved to add the first item. Failed due to lack of a second.

Spencer moved to accept the agenda and **S. Smith** seconded. All approved.

OLD BUSINESS None

NEW BUSINESS

1. AT&T Uverse Agreement **Lindsley Smith** introduced the item and that the contract was up for a five year renewal. **L. Smith** stated that she and City Attorney **Williams** recommended renewing the existing contract. **Williams** recapped the history of the agreement with AT&T and said that basically all has gone well. He told that it has been added to the contract that AT&T provide one basic video service and box at the Television Center for monitoring the Government Channel and the Public Access Channel broadcasts. **Williams** added that one point of contention has been the use of the word franchise in the Uverse agreement. AT&T wanted it out and he wanted to wait until the Federal Government decided how to deal with this new sort of service.

Kathy Foraker, AT&T Director of External Affairs, explained the service and that next year new technology will allow doubled coverage within the city limits.

S. Smith asked **Williams** if the fee was based on the number of subscribers. **Williams** replied that it was based basically on exactly the same things COX has to pay and that it was not based on numbers of

subscribers but was five percent of the bill and the bill was based on the same thing COX was having to pay to the City.

S. Smith asked what was AT&T's problem with using the word franchise and **Williams** replied that AT&T's lawyer would have to answer that. **Williams** said he would rather call it a franchise fee but AT&T did not want to. **S. Smith** asked if some where in the Ordinance it referred to a franchisee would it refer to them or not. **Williams** said he thought it would be applicable to them but suggested the Board might want to, in their Ordinance, talk about IP (Internet Protocol) Enabled Services because that should come within their purview as AT&T Uverse services provided were very similar to that provided by cable and maybe more.

Spencer asked what last year's five percent fee was. **Williams** did not know and **Foraker** said she could not divulge those numbers but the City could provide those numbers to him. **Williams** said he would provide those numbers.

Spearman asked if most municipalities treated AT&T in the same exact manner with the same agreement. **Foraker** said they don't have service all over Arkansas and they did not make a state wide franchise agreement because the current Telecommunications Law gave them the right to provide the services. **Foraker** said they had individual agreements with each city to match their franchise agreements but the basic wording was the same. **Williams** added that most cities did not want the Public, Education and Government channels.

From the public, **Rick McKinney**, asked about the box for quality control.

S. Smith moved that the agreement be forwarded to City Council with a recommendation for approval. **Shepherd** seconded. All approved. **Motion passed.**

2. Presentation for Public Access Services Contract Renewal **Gisler** commended Your Media for a job well done and then explained some of the changes that he and **Shelley** determined would be good to make. **Gisler** pointed out the following few small changes: 1. Short Takes would be telecast no less than 30 minutes and up to one hour. 2. a word in the section on Certified Producers was changed to clarify the intent 3. the wording that workshops could not be presented by any one within the organization was removed. **Gisler** then brought up the big change which was to remove the provision to provide contract productions. Discussion revolved around using a tax payer supported facility and equipment to generate revenue for any organization. **Shelley** clarified that the previous contract had already stipulated that fees had to reflect the current market which was \$180.00 per hour and the subsequent decline in requests for contract productions. **Shelley** said her concern was to be sure to be able to provide services which were fair, equal, non-discriminatory and first come first serve. **Gisler** reiterated that under the current contract the only things allowed to generate revenue for outside organizations were the four allowed fund raisers for non-profit 501 C3 organizations. The Lion's Club had representatives present and **Shelley** told that they were paying the current rate to have the telethon produced.

Pennington asked if the Lion's Club was the only organization to use the contract production. **Shelley** said yes. **Pennington** asked if the City Attorney had weighed in on it. **L. Smith** answered that Rick McKinney had contacted Williams. McKinney said Williams just allowed that he knew it had changed and he referred McKinney to Lindsley. **Lindsley** referenced Katherine Shurlds' pointing out, before the RFP process, to be wary of unfair competition with private groups. **Shepherd** asked if any competing production companies had a television station. **Gisler** said all television stations provide production

services. **Shepherd** asked about broadcast. **S. Smith** moved to recommend approval of the contract to City Council. **Spearman** seconded.

Spearman asked about the process a non-profit would go through for one of the four fund raising spots. **Shelley** explained the process and **Spearman** asked about the timeline for that. **Spencer** asked for clarification of the issues. **Shelley** explained that there were two issues. One was the issue of who produces the show and the option, if it could not be a contract production, of qualified producers producing the show. The other was the issue of fund raising on the air. **Spencer** also asked if one non-profit could ask for all four fund raisers. **Shelley** said yes. **Shepherd** asked how Your Media raised funds. **Shelley** responded fee for services, donor contributions and grant funding and **Gisler** clarified that they were all done outside of the Fayetteville Public Access Television facility.

S. Smith asked about the Lion's Auction on the Air and the hours involved and if that took away from their contractual obligation to serve the public or count as part of it. **Shelley** said it did not take away from it.

Rick McKinney spoke for the Lion's Club and emphasized the importance of this fund raising event. **Ehrig** asked if there had been any problems or complaints. **Gisler** said no. **Ehrig** said it was a charity and could be one the City provided to them. **Shepherd** moved to amend, to adjust the proposed language of the contract to ensure that this kind of event can go on next year. **Spencer** asked if **Shepherd** wanted to amend about contract productions or fund raising.

Pennington asked **Shepherd** if he wanted to amend to as the contract was before that provision was deleted, **L. Smith** restated that this contract was designed to be a very clean contract that ensured no contract shoots, non-commercial activity, essentially City building, City equipment, City materials, tax payer paid for items not being used to financially benefit a private entity. Exceptions were the bulletin board and short takes. **L. Smith** read the provision about the four allowed fund raisers and pointed out several legal considerations. **Gisler** addressed developing language to protect the first come first serve non-discriminatory access. **Shelley** suggested proposing one fund raiser per year per Fayetteville based non-profit and keeping in the "may produce" language.

Pennington seconded **Shepherd's** motion. **Pennington** asked about AETN and how it was funded.

Ehrig said his desire was to continue as before and let them do their fund raising. **S. Smith** asked if this made it a public forum and if so what rationale for only allowing four. He referenced when the University of Arkansas tried to limit the number of times a speaker could speak on campus and found out that was not a good idea. **Gisler** said language to protect first come first serve non-discriminatory access to the channel should be provided. He stated that these clauses need to be changed. **L. Smith** added that it is solid legally that the Board cannot say they will allow one and the Lion Club gets it. She asked questions about other City facilities or buildings being used to make money for private groups and sponsorship or partnership. **L. Smith** added to be careful about other 501 C3s and another, perhaps less desirable, product.

Stearman agreed that that was his only issue.

S. Smith said that constitutionally he has a lot of problems with it. He said that he did not think they could limit the number. Under Article 12 section 5 of the Arkansas Constitution. He suggested requesting an Attorney General opinion. **Shelley** asked for clarification and **S. Smith** answered that he was referring to using City equipment and funds to support any organization.

Pennington asked who can request an Attorney General opinion and **S. Smith** answered that Kit Williams could. **S. Smith** suggested to adopt the amended contract and operate under it until they get the legal opinion.

Gisler asked if in this was the issue of public forums or an issue to limit fund raising at the Television Center. **S. Smith** clarified that he did not think it was legal to fund raise and that it was problematic. **Pennington** asked staff and Your Media to re-examine the contract and reinsert those provisions which allow a non-profit to contract Public Access services and equipment as before. **Spencer** asked if that was to include the production being provided by Public Access. **Shelley** agreed that the two would have to be married.

S. Smith asked if this should be recommended to City Council or sent back to staff **L. Smith** said it should be voted on first to see if the provisions would be put back in or not. **Pennington** said then they would vote on whether on not to recommend the contract.

Ehrig said he would like to re-insert the discounted rates. **Don Marr**, City Chief of Staff, said that if the vote was to amend the contract the staff would take that forward and add a staff memo adopting or opposing the Board's opinion.

Gisler explained that Ehrig's proposal would make the City be in direct and unfair competition with private production companies. **Ehrig** withdrew his request.

The motion to amend passed.

Discussion resumed on the proposed contract. **Marvin Hilton** asked that the Board consider raising the amount of money Public Access received. **Jim Bemis** suggested a merit raise for the Public Access providers and asked that a percentage of collected COX and AT&T fees be appropriated to Public Access. **L. Smith** said funding was a City Council decision and **Marr** explained the current budget deficit and that the previous year Council had cut funding to every non-profit provider except Public Access and the Fayetteville Public Library. He mentioned that an increase was voted down 8-0 during the last contract renewal.

S. Smith asked if any other provider for contract production had received a merit raise and **Marr** said that the Economic Development Council had received a raise. **Gisler** asked for clarification that this amendment was to reinsert the provisions for contract productions and fund raising for non-profit organizations as stands in the contract for 2011. **S. Smith** said to reinsert the identical language. **Spencer** asked about the need to clarify the language about four to make it fair. **Shelley** said that that was not part of the motion.

Hilton returned to the table to say that one of the duties of the Board as stated in the Ordinance was to make a recommendation to City Council about the funding for Public Access.

Pennington called the vote on the contract. **The motion passed.**

S. Smith moved that the Board ask City Administration to request an opinion of the Attorney General on the constitutionality of the provisions. **Spearman** seconded. **L. Smith** said it would be mainly about generating revenue for private entities in public facilities. **S. Smith** said Article 12, section 5 of the State Constitution.

The motion passed.

3. Television Center/ Government Channel Report Gisler told about the following: from the third quarter report included in the packet, programs produced and telecast slightly over what anticipated with the exception of internal training and education; almost finished archiving from SVHS to DVD; several FOIA requests; worked with Your Media to develop the contract; worked with the City Attorney on AT&T agreement; installed new channel controller for Public Access so now the two channels are separate; three pallets of electronics were disposed of at the e-waste roundup; software and firmware updates; first Monday of each month maintenance and updates to telecast systems will be performed between 1 and 2:00pm; building remodel complete; new signage approved for the front of the building.

Spencer asked about the maintenance window and if it was going to be communicated to the public that it was going to occur. **Gisler** said a full screen graphic explaining the maintenance would be shown at the time. **Spencer** asked if the Television Center had City I.T. Support or did staff at the center do the installation of software and hardware. **Gisler** responded that almost all of the work was done by staff.

L. Smith commended the recycling of the electronics and the use of recycling in the remodel. She also pointed out that the new signage would have www.accessfayetteville.org on it and announced that the City has been recognized as number 7 Digital City of the Year.

4. Fayetteville Public Access Report **Shelley** reported lots of activity generated by the water bill inserts and showed the flier currently being distributed. She said a facebook page was being built. **Shelley** gave the following highlights from the 3rd quarter report included in the packet; 1. two above the contractual obligation due to testing out Fayetteville High school students 2. 38 total trainings done and 43 candidate producers to date 3. increase in class participation 4. new candidate producers highest number ever 5. program requesters up 6. five candidate producers already in 4th quarter. **Shelley** showed grafts and charts created by Flint Wood which allow an in depth analysis of usage of Fayetteville Public Access in order to set appropriate hours of operation.

Shelley told that Your Media got a \$7500 grant for Latino Digital Storytelling and was looking for a possible Education grant.

Shelley reported that no shows and cancelations were down and short takes up. She again said the water bill insert has been a big help and that people had not known the services were available and free.

Pennington asked if these reports were given to City Council and said he would include some of both in his 3rd quarter Telecommunications Board report. **Gisler** said some of this meeting could be edited for a presentation. **L. Smith** also had anecdotes of the success of the water bill inserts and the word getting around about the free classes and benefits of the services.

5. Fayetteville Education Channel (fayar.tv) Report **S. Smith** said that only an annual report was required by the Ordinance.

6. Report From Ad hoc Committee to review the existing Telecommunications Board Ordinance, codified as Title III, Chapter 33, Chapter IX of the City of Fayetteville Code of Ordinances **S. Smith** read from Committee Response to Bemis Complaint #1 document included in the packet. **S. Smith** moved that the report be accepted and that complaint number one be disposed of. **Pennington** seconded.

Bemis said he had sent his response via email and he continued to speak about seven take aways from a 2009 transition team meeting and issues the then Telecommunications Board had said they would do. **Bemis** said he hoped for a plan, a budget and an organizational chart for Telecommunications in the City. **Bemis** mentioned banding with others at this franchise time to create something that will strengthen our area of the state. **Bemis** said that this was the time to ask for bandwidth from COX and that this was the time to build a stronger strategy. **S. Smith** thanked **Bemis** for his interest and enthusiasm in Telecommunication issues.

Hilton commented that he did not think the definition in the ordinance about Telecommunication Infrastructure, which included more than cable and television, should be removed. He said he thought the Board should explore the purpose of those technologies and what content they should deliver.

Pennington called for the vote on the motion to find complaint number one by Mr. Bemis to be without merit and to take no further action.

The ayes had it and **the motion passed.**

S. Smith then started his report on the Ad Hoc Committee to review the Telecommunication Board Ordinance and corrected a notation to title III, chapter 33, ARTICLE IX rather than chapter IX of the City Code. **S. Smith** moved to approve this draft and submit it to the City Attorney for review. **Pennington** seconded. **S. Smith** then spoke in favor of the motion. He referred to exhibit A and highlighted the proposed changes as the following: Page one had two changes. One was to insert the word Fayetteville before residents. The other was to delete the section four about telecommunications infrastructure.; Page four of exhibit A to delete section about studies of infrastructure and making recommendations of funding; part B of page four to change oversee to regularly review; to insert the words work with City staff in the statement about facilitating to create policies; because of duplication of language in sections three and four they were combined and renumbered and instead of telecommunication providers it was to say franchisees and access providers and throughout citizens was changed to residents; and finally, section 6 no longer required to do a survey and franchisee replaced provider.

S. Smith said that the purpose was to reduce the authority of the Telecommunications Board while maintaining the essential function to make sure the PEG channels operate fully, free and open to the public and that it protect the City Council from making content decisions.

Hilton commented that he saw no reason to turn the ordinance in to such a narrow scope and suggested leaving it open to the possibilities.

S. Smith responded that the reason there had been so much turn over on the Board was due to frustration with the process because so much time was spent on listening to complaints about what was not done. He added that at some time if there were the time, the resources and the money to do those things he would make a motion to do them.

Gisler asked if maybe telecommunications providers or franchisees should be changed to Video Services providers. **S. Smith** asked if that was a term of art and **Gisler** said he was only trying to help clear up vagueness of telecommunications. Another definition section was discussed.

Pennington called the vote on the motion to adopt the changes recommended by the subcommittee and forwarding them to the City Attorney for review. **The motion passed.**

7. Report detailing staff time spent in investigating, compiling reports and responding to complaints, and responding to FOIA requests since September 1, 2011.

Pennington expressed that he had asked for a report detailing the amount of time spent on this item during an estimated 40 work days period. **L. Smith** spoke about her memo which was included in the packet and that some staff of those included on the email exchanges was not included. **L. Smith** corrected two years to two months in the third paragraph of her memo and stated that it was conservatively estimated as 67 hours spent. **Pennington** said that that was eight full days.

Ehrig asked if any of these complaints were by residents of Fayetteville. **L. Smith** responded that it was only Mr. Bemis who was not a resident.

Bemis said all of his requests stem from the Board. He said they are requests for services from the Board over the last three years not just from the last two months because there never was a complaint process. He asked not to be made the heavy. He said this was because the previous Boards did not do their work and each month there were different Board members. He stated that it was a problem with the Board system not performing.

L. Smith explained that the priority of Administration is to be very customer friendly and that staff was to help immediately. She referred to all the staff who received Bemis's emails. **Ehrig** talked about Fayetteville's population and the inordinate amount of FOIA requests. He mentioned that there ought to be a limit on requests and also asked if this was some sort of harassment. **L. Smith** said most people do not request the same documents and more over and over. **Pennington** and **S. Smith** said it was the right of the public to make these requests.

Hilton spoke about a previous Government Channel policy where citizens could request meetings to be telecast and said he did not understand why that policy was reversed. **S. Smith** said that that provision was voted down twice at City Council and **Hilton** said they did not and that it had been in the policy for seven years. **S. Smith** called point of order.

Pennington recognized **S. Smith's** point of order and they moved on to the next item.

8. Discussion of Amendments to Article VI and VII of the Administrative Rules

S. Smith said this was going to be a discussion or maybe it should be referred to a committee. He pointed out the following for suggested changes: in Article VI change citizen communications to public comments by Fayetteville residents; Article VII Fayetteville residents communicate their comments; concerning telecommunications provider issues there was nothing the Board could do about cell phone problems so why hear those comments; under complaints again change to Fayetteville residents; the need to include that if the Board found the complaint to be valid they would have an option to take action other than just refer it to City Council. He gave the example of complaints about censorship of content and that the Board would need to be able to say fix it; and finally, concerning the last sentence, **S. Smith** said the City Attorney has opined that there is no right of appeal.

S. Smith said these were things that should be clarified. **Gisler** asked if it was contradictory to say the Telecommunications Board could direct City Staff or the Public Access Operator to do anything as the Board is only an advisory Board. **S. Smith** said the City does not want to make content decisions and that was why Boards like the Telecommunications Board were established. **S. Smith** said to ask the City Attorney and **Gisler** suggested in conjunction with review of the Telecommunications Board Ordinance.

S. Smith requested to withdraw this item from the agenda so he could clarify it to bring back to the December meeting. **Pennington** approved that request.

9. Other Committee Reports **Pennington** said there was no Internet Committee meeting

Citizen Comments **Pennington** pointed out that it had been inadvertently omitted from the agenda but he called for it. **Shepherd** said he would like to use Fayetteville Resident already. **Gisler** asked if it would be appropriate protocol for members of the public to present items to add to the agenda rather than an open air session. **Pennington** said that the administrative rules set the agenda order and that a citizen can at this time comment on things not on the agenda. He said this could be discussed and amended but now it would be outside the rules to not allow that to happen. **Gisler** said he would be sure to add that until it is amended.

10. Agenda Suggestions for the November meeting **S. Smith** talked about a forum where people got on line and chatted about Board business and that fortunately it no longer existed because that was taking Board business out of public view. He said that he wanted to respond to some of Bemis's emails but thought that if there was no response time would be saved. His question was if there was anything in the administrative rules about not talking on emails about business. He stated that that had been one of Bemis's complaints that it was an FOIA violation because people were doing business on email. **S. Smith** said he thought that only referred to arguments and not to informational pieces. **Smith** moved that the Board behave and not be doing more business on email.

Pennington said he would work with **Gisler** to set an agenda for the next meeting.

11. Announcements from Board Members and Staff **Gisler** said that the November 17th meeting would be in Room 219 but the December meeting and all of next year's meetings would be in Room 326, on the third Thursday at 5:30pm.

Pennington said it was time for the third quarter report. **S. Smith** moved to authorize the Chairman to prepare the report for the City. **Ehrig** seconded. **Motion passed.**

12. Adjourn **Ehrig** moved to adjourn. **Shepherd** seconded. **Adjourned**